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HQ-APP-187-12
ORIGINAL

E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

September 20, 2012

**VIA E-MAIL, FAX, AND CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED**

National Freedom of Information Officer
U.S. EPA
FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
Fax: 202-566-2147
Email: Hq.foia@epa

**Re: FREEDOM OF INFORMATION ACT APPEAL
Appeal of Fee Waiver Denial Pursuant to 40 C.F.R. § 2.104(j)
FOIA Request No. HQ-FOI-01841-12**

Dear Sir or Madam:

This is a timely appeal of the U.S. Environmental Protection Agency's ("EPA") improper denial of the Oklahoma Attorney General's request for a fee waiver in connection with the States of Alabama, Arizona, Georgia, Kansas, Michigan, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Utah, and Wyoming's ("Requesting States") August 10, 2012 Freedom of Information Act ("FOIA") request No. HQ-FOI-01841-12. ("FOIA Request"). For the reasons stated in the FOIA Request, the Requesting States ask that this appeal be given expedited review.

I. BACKGROUND

As detailed in the FOIA Request, the Requesting States seek any and all documents regarding any consideration, proposal or discussions between the EPA Administrator with any Interested Organization or Other Organizations¹ concerning:

- i. the scope and application of the EPA Administrator's non-discretionary duty to take certain actions under the Clean Air Act ("CAA"), 42 U.S.C. §

¹ Interested Organization and Other Organizations are defined in the Requesting States FOIA Request.

7604(a)(2); the Clean Water Act (“CWA”), 33 U.S.C. § 1365; or the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6972;

- ii. the course of action to take with respect to any state implementation plan (“SIP”) required to be submitted to EPA under the CAA for any State;
- iii. the course of action to be taken concerning a State’s administration of any provision of either the CAA, CWA or RCRA; or
- iv. the course of action to be taken with respect to any administrative or judicial order, decree or waiver entered, or proposed to be entered, under the CAA, CWA or RCRA concerning a State (the “Subject”).

A copy of the FOIA Request is attached hereto and incorporated by reference as Exhibit A.

Because the information sought in the FOIA Request is in the public interest, will significantly contribute to the public’s understanding of the operations and activities of EPA and will not be used to further any commercial interest, the Requesting States properly sought a fee waiver pursuant to 40 C.F.R. § 2.107(I). *See also generally* 5 U.S.C. § 552(a)(4)(A)(iii). Despite establishing the public interest in viewing the requested Subject information and clearly explaining that the Requesting States would disseminate the information to the public, EPA erroneously denied the fee waiver request. In its August 21, 2012 denial letter, EPA claimed a lack of “specific intent [by the Requesting States] to disseminate the information to the general public” as the reason for rejecting the request for a fee waiver. A copy of EPA’s Fee Waiver Denial is attached hereto and incorporated by reference as Exhibit B.

As set forth below, EPA’s denial of the Requesting States’ fee waiver request is factually incorrect and legally contrary to FOIA, EPA’s own regulations, and case law interpreting and applying fee waiver regulations. Accordingly, the Requesting States request the immediate reversal of EPA’s denial of the fee waiver request and that EPA proceed forthwith in processing the FOIA Request.

II. THE REQUESTING STATES ARE ENTITLED TO A FEE WAIVER FOR THE FOIA REQUEST

1. The Requesting States’ Purpose And Intent For The Requested Information

Over the past three years EPA has allowed its regulatory and policy agenda to be largely defined by litigation settlements it has entered into with non-governmental organizations. On at least forty-five occasions, EPA and other federal agencies have settled lawsuits (which included

the payment of plaintiffs' attorneys' fees) brought under the CAA, the CWA, and RCRA. These settlements take the form of binding Consent Decrees that dictate how and when EPA and other federal agencies must develop stringent new regulations or whether to approve certain permit applications. Unfortunately, States responsible for implementing many of these regulations and permit programs have little knowledge of or input in the litigation or settlement process.

The effective exclusion of the States from these litigation or administrative proceedings is directly inconsistent with the cooperative federalism approach to implementing many of the environmental programs created under the CAA, CWA and RCRA. In implementing these federal environmental programs, States often must design plans that meet the individual circumstances of the State, while protecting and advancing the environmental goals and requirements of federal environmental law. However, these State efforts and plans are effectively superseded when EPA enters into negotiated settlements with non-governmental organizations alone that dictate how federal environmental law should be applied and implemented in an individual State. When the States' important role as a partner with EPA in implementing federal environmental programs is ignored, the States and their important sovereign interests are impaired, as are the rights of their citizens who rely on and expect the States to implement the federal environmental laws—not EPA along with non-governmental organizations.

The Requesting States have consolidated what would otherwise be thirteen individual FOIA requests for information into a single, comprehensive FOIA request to facilitate the sharing and dissemination of information to the public. The Requesting States seek the Subject information so that they may: understand and make public EPA's decision-making process in negotiating and entering into litigation settlements; utilize the Subject information to inform the preparation and participation in the public comment process on negotiated settlements between EPA and non-governmental organizations; utilize the Subject information to determine the extent to which the cooperative federalism principles embodied in the environmental programs, such as the CAA, are being eroded by these negotiated settlements; and use the Subject information to inform and educate State and federal lawmakers on the importance of cooperative federalism and why the States should continue to have the lead role in implementing federal environmental programs.

The Requesting States will analyze the information presented in the released documents and our staff of experts will produce a report as part of our review of EPA's operations. The report will be disseminated to the public by being posted on State government websites as well as to the media and all members of Congress. Further, the underlying Subject information and the report will be made available to the public by each of the Requesting States, including the University, Federal Depository and State Library systems ("**Library Systems**") in one or more of the Requesting States. These facilities are open to the general public; thousands of people in each of the Requesting States will have access to the Subject information and resulting report.

For example, as set forth in the Affidavit of Susan McVey, (Exhibit C) Director of the Oklahoma Department of Libraries, the Subject information will be made available to all users of the Oklahoma Department of Libraries system.

Additionally, most, if not all, of these Libraries also serve as a Federal Depository. Federal Depository Libraries were “established by Congress to ensure that the American public has access to its Government’s information.” <http://www.gpo.gov/libraries/>. As Federal Depositories, these libraries ensure that the agency publications and other information “are highly visible to the public, promoted, and safeguarded.” *Id.* Moreover, making available the requested Subject information and report at University Libraries will facilitate the teaching and research occurring at these Universities on important public policy issues including cooperative federalism and the State federal partnership. None of the requested Subject information or the resulting report will be used for commercial use or gain.

B. Legal Standard for Fee Waivers

FOIA’s fee waiver provision is to be liberally construed in favor of waivers for noncommercial requesters. *Forest Guardians v. DOI*, 416 F.3d 1173, 1178 (10th Cir. 2005). The fee waiver test “should not be interpreted to allow federal agencies to set up roadblocks to prevent noncommercial entities from receiving a fee waiver.” *W. Watersheds Project v. Brown*, 318 F. Supp. 2d 1036, 1039 (D. Id. 2004). FOIA imposes a non-discretionary duty to provide documents without any charge if the disclosed information satisfies a two-prong test established by statute. *Fed. CURE v. Lappin*, 602 F.Supp. 2d 197, 202 (D.D.C. 2009) (documents “*shall* be furnished without any charge” if two-prong test is satisfied (emphasis and omission in original)). First, the disclosed information must be likely to significantly contribute to public understanding of governmental operations and activities. 5 U.S.C. § 552(a)(4)(A)(iii). Second, the disclosed information cannot be primarily in the commercial interests of the requester. *Id.*

EPA has promulgated regulations detailing the specific factors it considers when evaluating the two-prong statutory test for fee waiver requests. 40 C.F.R. § 2.107(l)(2)-(3). EPA’s regulations elucidate further that to be granted a fee waiver, requests must establish that the information requested for disclosure must pertain to and significantly contribute to the public understanding of governmental operations and activities. As the FOIA Request demonstrates and this appeal further explains, the Requesting States have clearly met all of the statutory and regulatory requirements necessary to be granted a fee waiver.

1. First Factor: The FOIA Request is for Records Concerning EPA's Operations and Activities.

As detailed in the FOIA Request, the Subject information the Requesting States seek disclosure of directly concerns the operations and activities of EPA. 40 C.F.R. § 2.107(l)(2)(i). Specifically, the FOIA Request seeks information directly related to EPA's operations and activities related to its implementation and enforcement of the CAA, CWA, and RCRA through negotiated settlements with non-governmental organizations. With its FOIA Request, the Requesting States provided a six-page exhibit detailing lawsuits and administrative actions to which EPA was a party to and negotiated a settlement with a non-governmental organization regarding the implementation of federal environmental programs including the CAA, CWA, and RCRA. *See Exhibit A of FOIA Request.* These settlements directly imposed standards upon and/or required the State to take certain actions under the federal environmental program at issue in the lawsuit or administrative action.

In its enforcement of these federal programs through settlements with non-governmental organizations, EPA is using public funds and resources. The Tenth Circuit held that a federal agency's expenditure of public funds and resources was an operation and activity of that agency satisfying the first factor of the public interest prong. *Forest Guardians*, 416 F.3d at 1178; *see also Edmonds Inst. v. DOI*, 460 F. Supp. 2d 63, 66-67 (D.D.C. 2006). Similarly, EPA has devoted public funds to paying attorneys' fees and devoted public resources to negotiating and enforcing the settlements. Clearly, the Requesting States meet the first factor as the requested Subject information concerns the "operations or activities of the government." 40 C.F.R. § 2.107(l)(2)(i).

2. Second Factor: The FOIA Request Seeks Meaningful Information That Contributes to an Increased Public Understanding about EPA's Operations or Activities Regarding the CAA, CWA, RCRA, and SIPs.

In considering whether to grant the Requesting States fee waiver request, EPA must determine whether the requested Subject information is meaningfully informative and likely to contribute to an increase in public understanding about those operations or activities. 40 C.F.R. § 2.107(l)(2)(ii). The Requesting States FOIA Request seeks information that will result in understanding EPA's interactions with non-governmental advocacy groups and how those interactions influence how EPA sets policy that affects the public interest. How a federal agency interacts with non-governmental interests in the formation of policy has been identified as an "issue of the utmost importance." *NRDC v. United States EPA*, 581 F. Supp. 2d 491, 498 (S.D.N.Y. 2008). And "an understanding of how [a federal agency] makes policy decisions, including the **influence of any outside groups on this process**, is also important to the public's understanding of the [government]." *Forest Guardians*, 416 F.3d at 1179. (emphasis added).

With the release of this meaningful information the Requesting States will use it to educate the public about how EPA has elected to resolve litigation and administrative actions which directly affect the formation of current and future federal environmental policy. In *Western Watersheds v. DOI*, the U.S. District Court determined the requesting party satisfied the second factor by requesting information that it would use to educate the public about an agency's decision-making and its intent to create a summary of such information that was reader-friendly. 318 F. Supp. 2d at 1040-41. The U.S. District Court for the District of Columbia reached the same result in *Federal CURE* in holding the requesting party's intent to analyze and synthesize the requested information into a report relayed to the public via email and internet satisfied the second factor of the public interest prong. 602 F. Supp. 2d at 202-03. As explained in their FOIA Request, the Requesting States will prepare a report summarizing the Subject information which will be made available to the general public through the States' websites, through the Library Systems of one or more of the Requesting States and by other means.

3. Third Factor: The FOIA Request Seeks Information That Contributes to the Understanding of a Broad Audience of Persons Interested in EPA's Operations or Activities Regarding the CAA, CWA, RCRA, and SIPs.

To satisfy the third factor, the requesting party must show that the requested information contributes to the understanding of a broad audience of persons interested in the subject. 40 C.F.R. § 2.107(l)(2)(iii). In *Forest Guardians*, the Court held that the requesting party satisfied the third factor by demonstrating its intent to broadly disseminate the compiled information, which was only available in piecemeal and hard-to-access form. *Forest Guardians*, 416 F.3d at 1181-82. As in *Forest Guardians*, the Requesting States seek piecemeal information that is held in a number of EPA's regional or other offices throughout the nation and which information cannot be easily accessed. The requested information relates to EPA's communications and documentation in a large number of discrete lawsuits and enforcement actions. *Id.* (holding information in court houses, newspaper articles, and affidavits not sufficient to justify denying a fee waiver). The Requesting States will then compile and summarize this information into an easily accessible and readable report for their citizens and distribute copies of the report to Congress and the media.

As detailed above, the Requesting States intend to disseminate the requested information by making the report as well as the underlying information available to the public. The Requesting States will post the report on their websites, and will share the underlying information as well, including through the Library Systems of many of the Requesting States. Because the report will be posted on State government websites any American with access to the internet will have access to the report. Accordingly, the report will be available to better inform all U.S. citizens on matters affecting EPA's operations and policy formation. *See Judicial Watch Inc. v. U.S. DOI*, 122 F. Supp. 2d 5, 10 (D.D.C. 2000) (requesting party's concrete plan or

specific intent for publication and other dissemination of requested information demonstrates compliance with third factor). Further, the Requesting States stature as representatives of their respective citizens and accountability to their citizens to provide information affecting each State's implementation of the CAA, CWA, and RCRA demonstrates that the Requesting States can and will disseminate the requested information to a broad group of interested persons. *See Fed. CURE*, 602 F. Supp. 2d at 204 (stature of largest public advocacy group demonstrated ability to disseminate information to reasonably broad group).

Finally, the Requesting States will use the report to educate State and federal lawmakers regarding the activities of EPA in negotiating settlements with non-governmental organizations that directly affect current and future federal environmental policy. The report will provide invaluable information to these lawmakers as they consider future changes to environmental programs that will affect all Americans.

4. Fourth Factor: The FOIA Request Seeks Information That Will Significantly Enhance the Public's Understanding of EPA's Operations or Activities Regarding the CAA, CWA, RCRA, and SIPs.

The intention of FOIA is to "ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed," *NRDC* at 496 (quoting *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978)). The Requesting States are seeking the Subject information so as to significantly enhance the public's understanding of EPA's operations and activities and to ensure that the public has the information necessary to determine whether EPA's actions in entering into settlements with non-governmental organizations are prudent or thwart the cooperative federalism approach embodied in many of the federal environmental programs. 40 C.F.R. § 2.107(l)(2)(iv). Further, the public currently has no access to the requested Subject information. Only with disclosure of the requested Subject information will the public's understanding of EPA's operations and activities be greater than "as compared to the level of public understanding existing prior to the disclosure." 40 C.F.R. § 2.107(l)(2)(iv).

As detailed above, the Requesting States intend to prepare a report on EPA's decision-making process in negotiating and entering into certain litigation settlements and how these settlements are affecting current and future environmental policy. In taking the Subject information, which is not in the public domain, compiling it, and disseminating it to the public in easily accessible forums, the Requesting States meet the fourth factor. *Fed. CURE*, 602 F. Supp. 2d at 204-05. Clearly, the "public's understanding of EPA decision-making will be significantly enhanced by learning about the nature and scope of EPA communication[s]" and as such the Requesting States fee waiver request must be granted. *NRDC* at 501.

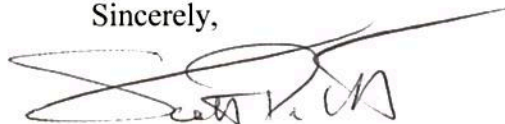
C. The Requesting States' FOIA Request Satisfies the Commercial-Interest Prong of the Fee Waiver Test.

In considering whether the second prong of the public interest fee waiver test is met, EPA considers the existence and magnitude of the requesting party's commercial interest in the requested information and whether the commercial interest outweighs the public interest. 40 C.F.R. § 2.107(l)(3). The Requesting States are exclusively comprised of State governments, which are noncommercial entities that have no commercial interest in the disclosure of information regarding the manner in which EPA operates. *See Fed. CURE*, 602 F. Supp. 2d at 201 (recognizing non-profit organization is a non-commercial entity entitled to fee waiver). The Requesting States' intended use of the requested Subject information is to make the information available—free of charge—to their respective citizens in a readable, summarized fashion. The States have no intention of using the information disclosed for financial gain. Nor does making the information available to the public create a commercial interest for the Requesting States. Further, the public interest in disclosure necessarily is greater in magnitude than that of the Requesting States' complete lack of commercial interest in the requested information. 40 C.F.R. § 2.107(l)(3)(ii). The Requesting States have no commercial interest in the information requested and therefore satisfy the second prong of the fee waiver test.

III. CONCLUSION

The Requesting States are entitled to a fee waiver because the information sought will benefit the public's understanding as to how environmental laws are being manipulated to usurp the authority of States via Consent Decrees between EPA and non-governmental organizations—negotiations that leave the affected State or States entirely out of the process. The impact of these EPA settlements on current and future environmental policy is significant and impacts all Americans who are either directly or indirectly affected by EPA regulation and policy. Further, the Requesting States are making the Subject information available to the public and receive absolutely no financial benefit from the information. As such, the Requesting States respectfully request that EPA's fee waiver denial be reversed and that all fees related to responding to the FOIA Request be waived, and that EPA respond to the Requesting States' FOIA Request.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. Scott Pruitt", is written over a horizontal line.

E. Scott Pruitt
Oklahoma Attorney General

On behalf of the States of Alabama, Arizona, Georgia, Kansas, Michigan, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, Wyoming



E. SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

August 10, 2012

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

FREEDOM OF INFORMATION ACT REQUEST

Freedom of Information Officer
U.S. EPA, Records, FOIA and Privacy Branch
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FOIA REQUEST

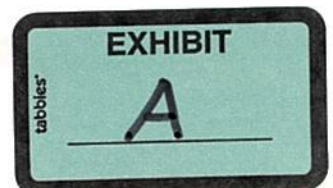
Dear Sir or Madam:

This is a request under the Freedom of Information Act (5 U.S.C. §552, as amended).

By this letter the States of Oklahoma, Alabama, Arizona, Georgia, Kansas, Nebraska, North Dakota, Michigan, South Carolina, South Dakota, Texas, Utah and Wyoming ("**Requesting States**") are requesting any and all documents (including any and all written or electronic correspondence, audiotapes, electronic records, videotapes, photographs, telephone messages, voice mail messages, e-mails, facsimiles, daily agendas and calendars, information about meetings and/or discussions, whether in-person or over the telephone, agendas, minutes and a list of participants for those meetings and/or discussions, and transcripts and notes of any such meetings and/or discussions) from January 1, 2009 to the date of this letter that discuss or in any way relates to:

(a) any consideration, proposal or discussions with any Interested Organization (as that term is defined below), or any other non-governmental organization, including citizen organizations, whose purpose or interest may include environmental or natural resource advocacy and policy ("**Other Organizations**"), concerning:

- i. the scope and application of the EPA Administrator's non-discretionary duty to take certain actions under the Clean Air Act ("**CAA**"), 42 U.S.C. § 7604(a)(2); the Clean Water Act ("**CWA**"), 33 U.S.C. § 1365;



xxi. Region 10.

(including receipt by carbon copy or blind carbon copy), regarding the Subject including, but not limited to, documents sent by or received from individuals representing or employed by the Interested Organizations or Other Organizations.

This request is not meant to be exclusive of any other records which, though not specifically requested, would have a reasonable relationship to the subject matter of this request.

“Interested Organizations” include the:

1. AFL-CIO
2. American Lung Association
3. American Nurses Association
4. Appalachian Center for the Economy and the Environment and Public Justice
5. Appalachian Mountain Club
6. Biodiversity Conservation Alliance
7. Center for Biological Diversity
8. Chesapeake Bay Foundation
9. Coal River Mountain Watch
10. Coalition for Clean Air
11. Coalition for a Safe Environment
12. Colorado Environmental Coalition
13. Conservation Law Foundation
14. Conservation Northwest
15. Defenders of Wildlife
16. Delaware Riverkeeper Network
17. Desert Citizens Against Pollution
18. Dine Citizens Against Ruining Our Environment
19. Door County Environmental Council
20. Environmental Activist League
21. Environment America
22. Environment California
23. Environmental Defense Fund
24. Environmental Integrity Project
25. Environmental Law and Policy Center
26. Farm Labor Organizing Committee
27. Florida Wildlife Federation
28. Friends of Animals
29. Grand Canyon Trust

30. Greater Yellowstone Coalition
31. Green Law
32. Greenpeace
33. Gulf Restoration Network
34. Habitat Education Center
35. Iowa Environmental Council
36. Izaak Walton League of America
37. Kentucky Environmental Foundation
38. Kentucky Waterways Alliance
39. Louisiana Environmental Action Network
40. Medical Advocates for Healthy Air
41. Michigan Nature Association
42. Migrant Clinicians Network
43. Minnesota Center for Environmental Advocacy
44. Missouri Coalition for the Environment
45. Montana Environmental Information Center
46. Montanans Against Toxic Burning
47. Mossville Environmental Action NOW
48. National Parks Conservation Association
49. National Wildlife Federation
50. Natural Resources Defense Council
51. Natural Resources Council of Maine
52. Northwest Treeplanters and Farmworkers United
53. Northwoods Wilderness Recovery
54. Ohio Environmental Council
55. Oregon Natural Desert Association
56. Our Children's Earth Foundation
57. Pacific Coast Federation of Fishermen's Associations
58. Pesticide Action Network North America
59. Physicians for Social Responsibility
60. Plains Justice
61. Powder River Basin Resource Council
62. Prairie Rivers Network
63. Red Rock Forests
64. Riverkeeper
65. San Juan Citizens Alliance
66. Save the Bay
67. Sierra Club
68. Southern Environmental Law Center
69. Southern Utah Wilderness Alliance
70. Tennessee Clean Water Network
71. United Farm Workers

- 72. Valley Watch
- 73. Waterkeeper Alliance
- 74. Western Colorado Congress
- 75. Western Resource Advocates
- 76. Western Watersheds Project
- 77. WildEarth Guardians
- 78. Wilderness Society
- 79. Wilderness Workshop
- 80. Winter Wildlands Alliance

Reason for FOIA Request

Over the past three years, the EPA has allowed its regulatory agenda to be largely defined by litigation settlements it has entered into with environmental organizations. Specifically, on at least forty-five occasions, EPA and other federal agencies have settled lawsuits (which included paying plaintiffs' attorneys' fees) brought under the CAA, the CWA, the RCRA, and the Endangered Species Act ("ESA"). *See Attachment A*. These settlements take the form of binding Consent Decrees that dictate how and when EPA and other federal agencies must develop stringent new regulations. Unfortunately, States responsible for implementing many of these regulations have little knowledge of or input in this process, which is not consistent with the cooperative federalism structure of federal environmental law.

Out of the forty-five settlements that have been made public, EPA has paid almost \$1 million in attorneys' fees to these groups, while also committing to develop a suite of sweeping new regulations. One EPA Consent Decree led to the promulgation of EPA's costliest regulation ever - the Mercury Air Toxics Standards (MATS). Other Consent Decrees include obligations that define how and when EPA acts on forty-five individual State Regional Haze SIPs - including the imposition of proposed federal implementation plans ("FIPs"). Still other Consent Decrees concern stringent new air and water regulations impacting large segments of American industry; and Consent Decrees with other agencies concern "listing" 674 plant and animal species as "threatened" under the ESA.

Many Consent Decrees authorize EPA to act in a way that is not consistent with current law. For example, Regional Haze Consent Decrees allowed EPA to propose combined Regional Haze SIPs/FIPs - something EPA has not done before in administering the CAA. This is detrimental to the States and "unwinds" the State and federal partnership contained in the CAA.

States affected by these non-governmental organization lawsuits are not included as parties in the suits and when affected States try to intervene, EPA and the environmental groups frequently oppose State intervention. For instance, when the State of North Dakota sought

to intervene in *Wildearth Guardians v. Jackson* in the U.S. District Court for the Northern District of California (where *Wildearth Guardians* filed its suit), EPA opposed the intervention despite the fact that the case involved how and when EPA should act on North Dakota's proposed Regional Haze SIP.

State Attorneys General from the Requesting States are in the process of evaluating EPA's alarming practice of relying on Consent Decrees to deny the States their important role as a partner with EPA in implementing federal environmental law. Not only does EPA's action harm and jeopardize the States' role as a partner with EPA, but it harms the interests of the citizens of the Requesting States. Our citizens rely on and expect the States to implement federal environmental law. Often, these implementation efforts require the States to design plans to meet the individual circumstances of the State, while protecting and advancing the environmental goals and requirements of federal environmental law. When EPA coordinates with non-governmental organizations regarding how federal environmental law should be applied and implemented in an individual State and excludes the State from that effort the State and its citizens are harmed.

Rather than make individual FOIA requests, the Requesting States are making one request for the release of documents with the Interested Organizations and Other Organizations concerning the Subject. The Requesting States have lobbied, litigated, and publicly commented on federal actions which directly affect their individual State interests and those of their citizens. The requested documents are sought in order to more clearly illuminate the operations and activities of EPA. As such, release of the requested documents will significantly contribute to public understanding and oversight of the EPA's operations, particularly regarding the quality of the EPA's activities and the efficacy of both Congressional directives and EPA policies and regulations relating to the Requesting States.

The Requesting States will analyze the data presented in the released documents and our staff of experts will produce a report as part of our ongoing review of EPA's operations. The report will be disseminated to others in our States as well as disseminated to the media and Congress as a component of our active involvement in State efforts addressing environmental issues.

The Requesting States plan to make these documents available to the public at the University Libraries in the respective Requesting States. As these facilities are open to the general public, many people will thereby have access to the information contained in the materials which are the subject of this request. Further, most, if not all, of these Libraries are a Federal Repository, its Congressionally certified status as a resource to foster openness in government, as well as its role in facilitating the teaching and research occurring at the Universities, will be well served. These materials will not be used for commercial use or gain.

In light of the ongoing and contentious public policy controversy regarding EPA's coordination and planning its regulatory agenda with non-governmental organizations, the Requesting States note that time is of the essence in this matter. There is a great need for prompt disclosure so that the released information may more adequately inform public understanding and discussion of EPA's actions.

In the event that access to any of the requested records is denied, please note that the FOIA provides that if only portions of a requested file are exempted from release, the remainder must still be released. We therefore request that the Requesting States be provided with all non-exempt portions which are reasonably segregable. We further request that you describe the deleted material in detail and specify the statutory basis for the denial as well as your reasons for believing that the alleged statutory justification applies in this instance. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will be helpful in deciding whether to appeal an adverse determination, and in formulating arguments in case an appeal is taken. The EPA's written justification might also help to avoid unnecessary litigation. We of course reserve our right to appeal the withholding or deletion of any information and expect that you will list the office and address where such an appeal can be sent.


We anticipate, however, that you will make the requested materials available within the statutorily prescribed period. We thus also request that you waive any applicable fees since disclosure meets the standard for waiver of fees as it is in the public interest. *See* 40 C.F.R. § 2.107(l). Specifically, this request concerns "the operations or activities of the government;" disclosure is "likely to contribute" to an understanding of government operations or activities; disclosure will contribute to "public understanding;" the disclosure is likely to contribute "significantly" to public understanding of government operations and activities; and the States have no commercial interest in disclosure of the documents – the Requesting States' interest is to facilitate and promote the public interest. 40 C.F.R. § 2.107(2)(i),(iv). In this regard, we reiterate that we have no intention of using the information disclosed for financial gain. If for some reason, the fee waiver request is denied, while reserving our right to appeal such a decision, the Requesting States are willing to pay \$5.00 (five dollars) to cover costs of document search and duplication.

Access to the requested records should be granted within twenty (20) working days from the date of your receipt. Failure to respond in a timely manner shall be viewed as a denial of this request and the requesters may immediately file an administrative appeal. Finally, the Requesting States ask that all correspondence regarding this FOIA request and all documents produced in response to this request be directed to the Attorney General of the State of Oklahoma.

August 10, 2012
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Thanking you in advance for your prompt reply.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Scott Pruitt", with a long horizontal flourish extending to the right.

E. Scott Pruitt
Oklahoma Attorney General



Luther Strange
Attorney General
State of Alabama



Tom Horne
Attorney General
State of Arizona



Sam Olens
Attorney General
State of Georgia



Derek Schmidt
Attorney General
State of Kansas



Bill Schuette
Attorney General
State of Michigan



Jon Bruning
Attorney General
State of Nebraska



Wayne Stenehjem
Attorney General
State of North Dakota



Alan Wilson
Attorney General
State of South Carolina



Marty J. Jackley
Attorney General
State of South Dakota



Gregg Abbott
Attorney General
State of Texas



Mark Shurtleff
Attorney General
State of Utah



Gregory A. Phillips
Attorney General
State of Wyoming

<u>Case Name</u>	<u>Additional Plaintiff(s)</u>	<u>Issue</u>
<i>Portland Cement Assn. v. EPA, No. 07-1046 (D.C. Cir.)</i>	Sierra Club, Desert Citizens Against Pollution, Downwinders At Risk, Friends of Hudson, Huron Environmental Activist League, Montanans Against Toxic Burning	NESHAP for Cement Kilns
<i>California v. EPA, No. 08-1178 (D.C. Cir.)</i>	Sierra Club, Environmental Defense Fund, NRDC, Environment California	California GHG Waiver
<i>Florida Wildlife Federation v. Jackson, No. 4:08-cv-000324-RH-WCS (N.D. Fla.)</i>	Sierra Club, St. Johns Riverkeeper, Conservancy of Southwest Florida, and Environmental Confederation of Southwest Florida	Numeric nutrient criteria for waters in the State of Florida
<i>WildEarth Guardians v. Jackson, No. 09-cv-00089-CCK (D. D.C.)</i>	San Juan Citizens Alliance	CAA Regulations on Oil and Gas Drilling Operations
<i>Mississippi v. EPA, No. 08-1200 (D.C. Cir.)</i>	American Lung Association, Environmental Defense Fund, NRDC, National Parks Conservation Association, Appalachian Mountain Club	Ozone NAAQS Reconsideration
<i>Sierra Club v. EPA, No. 1:09-cv-00218 (D.C. Cir.)</i>	Environmental Integrity Project	Review and revision of new source performance standards for nitric acid plants
<i>Mossville Environmental Action NOW v. Jackson, No. 1:08-cv-01803 (D. D.C.)</i>	Louisiana Environmental Action Network, Sierra Club	New MACT standards for PVC manufacturers
<i>WildEarth Guardians v. Jackson, No. 4:09-cv-02453 (N.D. Cal.)</i>		Compliance with Regional Haze rules in California, Idaho, New Mexico, North Dakota, Oklahoma, Oregon

<u>Case Name</u>	<u>Additional Plaintiff(s)</u>	<u>Issue</u>
<i>Center for Biological Diversity v. EPA, No. 09-00670 (W.D. Wash.)</i>		Regulation of GHG under the CWA
<i>American Nurses Association v. Jackson, No. 1:08-cv-02198-RMC (D. D.C.)</i>	Chesapeake Bay Foundation, Conservation Law Foundation, Environment America, Environmental Defense Fund, Izaak Walton League of America, Natural Resources Council of Maine, NRDC, Physicians for Social Responsibility, Sierra Club, Ohio Environmental Council, Waterkeeper Alliance	CAA National Emissions Standards for Hazardous Air Pollutants (NESHAP) for coal- and oil-fired electric generating units. Plaintiffs sued seeking to require EPA to set MACT standards under Section 112 of the CAA.
<i>Sierra Club v. EPA No. 09-1063 (D.C. Cir.)</i>	Louisiana Environmental Action Network	Emission-Comparable Fuels rule reconsideration
<i>Sierra Club v. Jackson, No. 1:10-cv-133-PLF (D. D.C.)</i>	WildEarth Guardians	Final action on (and disapproval of) Ozone State Implementation Plans for 21 states
<i>Natural Resources Defense Council v. EPA, No. 06-0820-ag (2d Cir.)</i>	AFL-CIO, Farm Labor Organizing Committee, Migrant Clinicians Network, Pesticide Action Network North America, United Farm Workers, Northwest Treeplanters and Farmworkers United, Physicians for Social Responsibility	Pesticide human testing consent rule.
<i>Sierra Club v. Jackson, NO. 4:09-cv-00152-SBA (N.D. Cal.)</i>		Multi-industry CAA Section 112 air toxics rules

<u>Case Name</u>	<u>Additional Plaintiff(s)</u>	<u>Issue</u>
<i>Ohio Valley Environmental Coalition, et al v. United States Army Corps of Engineers, et al. petition for cert. dismissed, (U.S. August 19, 2010) (No. 09-247)</i>	Appalachian Center for the Economy and the Environment and Public Justice, Coal River Mountain Watch, and West Virginia Highlands Conservancy	CWA Guidance for Mountaintop Removal Mining Permits
<i>Sierra Club v. Jackson, No. 09-1041 (D.C. Cir.)</i>		Revisions to the Definition of Solid Waste under RCRA
<i>Riverkeeper v. EPA, No. 1:06-cv-12987 (S.D. N.Y.)</i>	Soundkeeper, Raritan Baykeeper, Delaware Riverkeeper Network, American Littoral Society, Save the Bay, Friends of Casco Bay, Santa Monica Baykeeper	CWA Section 316(b) standards on Cooling Water Intake Structures
<i>Coke Oven Environmental Task Force v. EPA, consolidated into New York v. EPA (power plants); Environmental Integrity Project v. EPA, consolidated into American Petroleum Institute v. EPA (oil NSPS), No. 06-1332 (D.C. Cir.)</i>	Environmental Defense Fund, Sierra Club, NRDC	GHG NSPS for Power Plants and Refineries
<i>WildEarth Guardians, et al. v. Jackson, No. 1:11-cv-0001-CMA-MEH (D. CO)</i>		Compliance with Regional Haze rules in Colorado, Wyoming, Montana, and North Dakota
<i>Sierra Club, et al. v. Jackson, No. 10-cv-01954 VRW (N.D. CAO.).</i>	Sierra Club, Medical Advocates for Healthy Air	EPA decision on adequacy of California's State Implementation Plan for Ozone in the San Joaquin Valley

<u>Case Name</u>	<u>Additional Plaintiff(s)</u>	<u>Issue</u>
<i>Sierra Club, et al. v. Jackson, No. 10-cv-00889-CKK (D. D.C.)</i>	Kentucky Environmental Foundation	EPA decision on adequacy of Kentucky's State Implementation Plans for Ozone and Regional Haze
<i>Natural Resources Defense Council, Inc., et al. v. Jackson, No. CV-10-6029-MMM-AGR (C.D. Cal.).</i>	Coalition for a Safe Environment	Approval/disapproval of plan revisions to State Implementation Plans for Ozone and PM2.5 for California's South Coast Air Basin
<i>WildEarth Guardians v. Jackson, Case No. 4:11-cv-02205-SI (N.D. Cal.).</i>	Elizabeth Crowe	EPA decision on adequacy of Phoenix-Mesa State Implementation Plan for 1997 Ozone standard
<i>Sierra Club v. Jackson, No.3:09-cv-00122-slc (W.D. WI)</i>		Decision to grant or deny a petition by Sierra Club that EPA object to Title V operating permit for Columbia Generating Station in Wisconsin
<i>Sierra Club v. Johnson, No. 2:09-CV-00085-WOB (E. D. KY)</i>		Decision to grant or deny a petition by Sierra Club that EPA object to Title V operating permits for Spurlock Generating Station in Maysville, KY
<i>Sierra Club, et al. v. Jackson, No. 1:09-cv-00312 (D.D.C)</i>	Valley Watch	Decision to grant or deny a petition by Sierra Club that EPA object to Title V operating permit for Cash Creek Generating Station in Kentucky

<u>Case Name</u>	<u>Additional Plaintiff(s)</u>	<u>Issue</u>
<i>Sierra Club v. Jackson, No. 1:09-cv-01028-CKK (D.D.C).</i>		Decision to grant or deny a petition by Sierra Club that EPA object to Title V operating permit for William C. Dale Generating Station in Kentucky
<i>Environmental Integrity Project, et al. v. Jackson, No. 1:09-cv-01025-EGS (D.D.C).</i>	Environmental Integrity Project	Decision to grant or deny a petition by Sierra Club that EPA object to Title V operating permit for John W. Turk Generating Station in Arkansas
<i>Sierra Club v. Jackson, No. 09-cv-0751 (W.D. WI).</i>		Decision to grant or deny a petition by Sierra Club that EPA object to Title V operating permit for J.P. Pulliam Generating Station in Wisconsin
<i>Sierra Club v. Jackson, No. 10-cv-0127 (W.D. Wis.).</i>		Decision to grant or deny a petition by Sierra Club that EPA object to Title V operating permit for Edgewater Generating Station in Wisconsin
<i>Sierra Club v. Jackson, Sierra Club v. Jackson, No. 10-cv-0859 (D.D.C.)</i>		Decision to grant or deny a petition by Sierra Club that EPA object to Title V operating permits for TVA Paradise Fossil Plant in Drakesboro, KY
<i>National Parks Conservation Ass'n et al v. Jackson and U.S. EPA et al, No. 1:11-cv-01548-ABJ; also No. 12-5211 in the D.C. Circuit</i>		Consent Decree entered in the D.C. District Court between the EPA and Environmental Organizations on regional haze SIPs and FIPs. State of Arizona has Intervened and appealed the Decree to the D.C. Circuit Court of Appeals

<u>Case Name</u>	<u>Additional Plaintiff(s)</u>	<u>Issue</u>
<i>Gulf Restoration Network v. Jackson, U.S. EPA, No.: 2:12-cv-00677 (E.D. Louisiana)</i>	Missouri Coalition for the Environment, Iowa Environmental Council, Tennessee Clean Water Network, Minnesota Center for Environmental Advocacy, Sierra Club, Waterkeeper Alliance, Prairie Rivers Network, Kentucky Waterways Alliance, Environmental Law & Policy Center, and the Natural Resources Defense Council	Challenge by environmental organizations to EPA's conclusion that the EPA does not have authority to implement numeric nutrient water quality standards and a nutrient TMDL in the Mississippi River Basin



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 21, 2012

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. E. Scott Pruitt
Oklahoma Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105

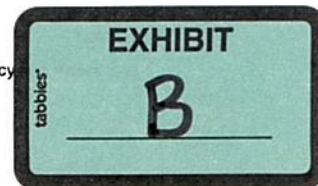
RE: Request Number: HQ-FOI-01841-12

Dear Mr. Pruitt:

This is in response to your request for a fee waiver in connection with your Freedom of Information Act (FOIA) request to the U.S. Environmental Protection Agency (EPA) seeking all Records from January 1, 2009 to the date of your request letter that relates to EPA Administrator's non-discretionary duty to take actions under the Clean Air Act ("CAA"), the Clean Water Act ("CWA") or the Resource Conservation and Recovery Act ("RCRA") and the course of action to take with respect to any state implementation plan ("SIP"). We have reviewed your fee waiver justification and based on the information provided, we are denying your request for a fee waiver. You have not expressed a specific intent to disseminate the information to the general public. As a result of you failing to meet the above criteria, accordingly, there is no need to address the remaining prongs of the fee waiver criteria.

The Administrator's Office (AO) and the Office of Inspector General (OIG) will be responding to your information request. You have been placed in the other fee category, and will be charged for the costs of search time and duplication, excluding the first two hours of search time and the first 100 pages of duplication. If the estimated costs exceed \$25.00, AO and OIG will contact you regarding the cost of processing your request and seek an assurance of payment. They will be unable to process your request until they receive your assurance of payment.

Under the FOIA, you have the right to appeal this fee waiver denial determination to the National Freedom of Information Office, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), E-mail: hq.foia@epa.gov. Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after 30 days. The appeal letter should include



the FOI number listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Should you choose to appeal this determination, please be sure to fully address all factors required by EPA's FOIA Regulations, located at 40 C.F.R. § 2.107(l) in your appeal. If you have any questions concerning this determination please contact me at (202) 566-1667.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry F. Gottesman", with a long, sweeping horizontal line extending to the right.

Larry F. Gottesman
National FOIA Officer

AFFIDAVIT OF SUSAN McVEY

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

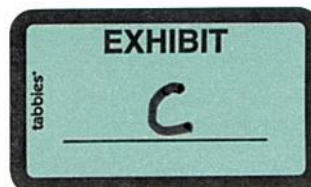
SUSAN McVEY , being duly sworn, states as follows:

1. My name is Susan McVey. I am over 21 years of age and am fully competent to attest to the matters contained in this affidavit. This affidavit is based on my personal knowledge.

2. I am employed by the Oklahoma Department of Libraries (“**ODL**”) as the Director. ODL is the official state library for the State of Oklahoma. ODL is responsible for administration of state and federal government documents available at Oklahoma’s libraries

3. ODL maintains a website with publications regarding the U.S. Government and other governmental information from which interested persons can print the publication or otherwise obtain a printed copy of it. *See* <http://documents.ok.gov>. This website is accessed by approximately 96,740 persons per year and 3, 696, 174 pages of state government publications were viewed or downloaded from the website in the previous fiscal year.

4. The Oklahoma Publications Clearinghouse (“**OPC**”) is an agency within the ODL and is responsible for establishing an Oklahoma government publications depository library system for the use of the citizens of the State of Oklahoma, collecting state publications from every agency, and retaining and permanently preserving copies of all such publications. Publications received by the OPC from state government agencies are distributed to a network of eighteen depository libraries located throughout Oklahoma as well as the U.S. Library of Congress.



5. Oklahoma's eighteen depository libraries are located throughout the state. The state documents collections are open to all interested parties and are available during the week including nights and weekends.

I declare under penalty of perjury under the laws of the United States that the foregoing is true.

FURTHER AFFIANT SAYETH NOT.

Susan C. McVey
by: SUSAN McVEY

Subscribed and sworn to before me on this 18th day of September, 2012, by
Susan McVey in Oklahoma County, Oklahoma.

Witness my hand and official seal.

Cindy Mooney
Notary Public

My commission expires: 03/10/2015

